

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEBRA RAE VERSTEEG,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:16-cv-05075-RBL

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES

DKT. #14

THIS MATTER is before the Court on Plaintiff Versteeg's Motion for Attorney's Fees [Dkt. #14] under the Equal Access to Justice Act, 28 U.S.C. § 2412. The Commissioner argues her position was substantially justified and the amount of Versteeg's requested fees is unreasonable under the particular facts of this case. *See* Dkt. 16. The Court disagrees, and GRANTS plaintiff's motion for statutory fees.

PROCEDURAL HISTORY

On July 18, 2016, this Court issued an order reversing and remanding the Commissioner's decision to deny benefits for further administrative proceedings. *See* Dkt. 12. The Court found that (1) the ALJ erred by failing to provide a specific and legitimate reason supported by substantial evidence to discount the opinion of treating physician Anne Scott,

1 M.D., and (2) the error was harmful because the resulting residual functional capacity and step-
2 five finding were not supported by substantial evidence. *See id.*, pp. 4–8. The Court reversed
3 the Commissioner’s decision under sentence four of 42 U.S.C. § 405(g) for further
4 administrative proceedings due to the harmful error. *See id.*, pp. 8–9.

5 DISCUSSION

6 In any action brought by or against the United States, the EAJA requires that “a court
7 shall award to a prevailing party other than the United States fees and other expenses . . .
8 unless the court finds that the position of the United States was substantially justified or that
9 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). When determining
10 the issue of substantial justification, the court reviews only the “issues that led to remand” in
11 determining if an award of fees is appropriate. *Toeblor v. Colvin*, 749 F.3d 830, 834 (9th Cir.
12 2014).

13 Plaintiff was the prevailing party because the Court reversed and remanded the
14 Commissioner’s decision to deny benefits for further administrative proceedings. *See* Dkt. 12.
15 The ALJ’s failure to provide a sufficient reason to discount Scott’s opinion led to the remand.
16 *See id.*, p. 8.

17 I. Substantial Justification

18 The Commissioner argues that her position that the ALJ provided a sufficient reason to
19 discount Scott’s opinion was substantially justified. *See* Dkt. 16. The Commissioner has the
20 burden of proving that her position was substantially justified. *See Hardisty v. Astrue*, 592 F.3d
21 1072, 1076 n.2 (9th Cir. 2010). In addition, a “substantially justified position must have a
22 reasonable basis both in law and fact.” *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir.
23 2001) (citations omitted). The fact that the Commissioner did not prevail on the merits does not
24 compel the conclusion that her position was not substantially justified. *See Kali v. Bowen*, 854

1 F.2d 329, 334 (9th Cir. 1988) (citing *Oregon Envtl. Council v. Kunzman*, 817 F.2d 484, 498
2 (9th Cir. 1987)). However, a determination by the Court that the administrative decision was
3 not supported by substantial evidence is a “strong indication” that the Commissioner’s position
4 was not substantially justified. *Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005).
5 Only in the “decidedly unusual case” will the Commissioner’s position be found to have
6 substantial justification under the EAJA even though the administrative decision was reversed
7 for lacking substantial evidence in the record. *Al-Harbi v. I.N.S.*, 284 F.3d 1080, 1085 (9th Cir.
8 2002).

9 Here, the Commissioner simply reiterates her position from the original litigation,
10 arguing that the ALJ reasonably found that Scott did not adequately support her opinion. *See*
11 Dkt. 16, p. 3. The Court found this reason for discounting Scott’s opinion to be unsupported by
12 substantial evidence. *See* Dkt. 12, p. 5. The Court noted that Scott specifically stated that
13 diagnostic lab testing in the record supported the marked limitations to which she opined. *See*
14 *id.*

15 Substantial evidence is that which a reasonable mind might accept as adequate to
16 support a conclusion. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). Having found that
17 the ALJ’s reasons did not meet the substantial evidence standard, the Court now finds no
18 reason that this is the rare case in which the Commissioner’s position was otherwise
19 substantially justified. The Court also concludes that there are no special circumstances that
20 render an EAJA award in this matter unjust. Accordingly, the Court will award plaintiff
21 attorney’s fees under the EAJA.

22 **II. Reasonableness of the Fees**

23 According to the United States Supreme Court, “the fee applicant bears the burden of
24 establishing entitlement to an award and documenting the appropriate hours expended.”

1 *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The Court has an independent duty to review
2 the submitted itemized log of hours to determine the reasonableness of hours requested in each
3 case. *See id.* at 433, 436–37.

4 Once the Court determines that a plaintiff is entitled to a reasonable fee, “the amount of
5 the fee, of course, must be determined on the facts of each case.” *Id.* at 429, 433 n.7. “[T]he
6 most useful starting point for determining the amount of a reasonable fee is the number of
7 hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Id.* at 433.

8 Here, Versteeg prevailed on the single claim of whether or not the denial of her social
9 security application was based on substantial evidence in the record as a whole and not based
10 on harmful legal error. When the case involves a “common core of facts or will be based on
11 related legal theories . . . the district court should focus on the significance of the overall relief
12 obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” *See id.*
13 at 435. The Supreme Court concluded that where a plaintiff “has obtained excellent results,
14 [her] attorney should recover a fully compensatory fee.” *Id.*

15 The Court concludes based on a review of the relevant evidence that Versteeg here
16 obtained excellent results. The Court then looks to “the hours reasonably expended on the
17 litigation,” which, when combined with the reasonable hourly rate, encompass the lodestar. *See*
18 *id.* Versteeg requests attorney’s fees in the amount of \$3,354.75, representing 17.5 hours of
19 work. *See* Dkt. 14-1. The Commissioner argues that the amount requested is unreasonable
20 because Versteeg enjoyed limited success, analogizing the case to *Blair v. Colvin*, 619
21 Fed.Appx. 583 (9th Cir. 2015). *See* Dkt. 16, p. 4. However, where the district court in *Blair*
22 limited the scope of remand to reassessing consultants’ positions regarding one workplace
23 limitation (*see Blair*, 619 Fed.Appx. at 585), the Court’s order here was not so limited. *See*
24 Dkt. 12. The Court found that the ALJ’s error in evaluating Scott’s opinion affected the RFC

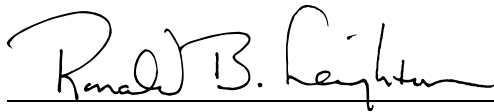
1 and step-five finding, such that further administrative proceedings were necessary, declining to
2 decide the other errors alleged. *See id.*

3 Therefore, the Court finds reasonable Versteeg's original request for attorney's fees in
4 the amount of \$3,354.75 and expenses in the amount of \$400.00.¹ The Court also finds
5 reasonable Versteeg's request for \$402.57 for 2.1 hours of additional work replying to the
6 Commissioner's objection to her request for fees. *See Comm'r, I.N.S. v. Jean*, 496 U.S. 154
7 (1990).

8 CONCLUSION

9 Versteeg is awarded at total of \$3,757.32 in attorney's fees and \$400.00 in expenses
10 under the EAJA and consistent with *Astrue v. Ratliff*, 130 S. Ct. 2521, 2524 (2010). Versteeg's
11 award is subject to any offset allowed pursuant to the Department of Treasury's Offset
12 Program. *See id.* at 2528. The check for EAJA fees shall be mailed to Versteeg's counsel:
13 Kevin Kerr, Schneider Kerr Law Offices, P.O. Box 14490, Portland, OR 97293.

14 DATED this 15th day of November, 2016.

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18 Ronald B. Leighton
19 United States District Judge
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23 ¹ The Commissioner argues that the Court should deny Versteeg's request for expenses
24 because they were "unspecified." *See* Dkt. 16, p. 5. However, the Court infers that the
requested expenses are for the \$400.00 filing fee and grants the request.